

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BAKERSFIELD CITY SCHOOL  
DISTRICT, GREENFIELD UNION  
SCHOOL DISTRICT, AND KERN  
COUNTY SUPERINTENDENT OF  
SCHOOLS.

OAH CASE NO. 2014040234

ORDER DENYING  
SUPERINTENDENT'S MOTION TO  
DISMISS

On April 2, 2014, Student filed a Due Process Hearing Request<sup>1</sup> (complaint) naming Bakersfield City School District (Bakersfield), Greenfield Union School District (Greenfield), and Kern County Superintendent of Schools (Superintendent). The complaint alleged that each of the respondents denied Student a free appropriate public education, albeit during different time periods. Concerning Superintendent specifically, the complaint alleged that Superintendent and Greenfield denied Student a one-to-one aide and changed Student's placement without written notice.

On May 6, 2014, Superintendent filed a Motion to Dismiss (motion) Superintendent as a party. Superintendent argued that Superintendent is merely an administrative agent for the Kern County Special Education Local Plan Area (SELPA) and that Superintendent is not the agency responsible for providing a free appropriate public education, or any services, to Student.

Student filed an opposition to the motion on May 9, 2013. Student argued that Superintendent was involved in determining what placement was appropriate for Student and that Superintendent had offered Student placement in a specific special day class.

For the reasons discussed below, Superintendent's motion is denied.

---

<sup>1</sup> A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

## APPLICABLE LAW

Special education due process hearings may involve the parent or guardian, the student, and “the public agency involved in any decisions regarding a pupil.” (Ed. Code, § 56501, subd. (a).) A “public agency” is defined as “a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs.” (Ed. Code, §§ 56500 and 56028.5.)

Although the Office of Administrative Hearings (OAH) will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.), special education law does not provide for a summary judgment procedure.

## DISCUSSION

Here, Superintendent’s motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. Superintendent contends it was not responsible for providing Student a free appropriate public education because it is merely an administrative agent of the SELPA. Superintendent seeks a determination that it is not a public agency providing special education or related services to Student, and that it is therefore not a proper party. Student offered evidence in the form of a declaration of Justin Thompson, “one of the principals for special education programs for the [Superintendent],” which had previously been filed in opposition to Student’s motion for stay put. Mr. Thompson stated Superintendent, via the Administrator of the Division of Special Education for Superintendent, “offer[ed] special education and services” to Student via a 30-Day Administrative Interim Placement, and that Superintendent “offered Ms. Huot’s Special Day Class for kindergarten through second grade students” as Student’s placement. Thus, determining whether Superintendent is a public agency providing special education or related services to Student, and therefore whether Superintendent is or is not a proper party, requires factual findings by the hearing officer.

Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

DATE: May 12, 2014

/s/

---

KARA HATFIELD  
Administrative Law Judge  
Office of Administrative Hearings

